Supreme Court, U. S.
FILED
FEB 26 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1320

RAYMOND KASSEL, et al.,
Appellants,

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE,
A Delaware Corporation,
Appellee.

On Appeal from the United States Court of Appeals for the Eighth Circuit

JURISDICTIONAL STATEMENT

THOMAS J. MILLER
Attorney General of Iowa

MARK E. SCHANTZ
Solicitor General
Hoover State Office Building
Des Moines, Iowa 50312

ROBERT W. GOODWIN
Special Assistant Attorney General

LESTER A. PAFF
Assistant Attorney General

Attorneys for Appellants

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

INDEX

	Page
Opinions	1
Jurisdiction	2
Constitutional Provision and Statute Involved	2
Questions Presented	5
Statement of the Case	6
The Questions Are Substantial	11
CONCLUSION	19
APPENDIX:	
Opinion of the Eighth Circuit Court of Appeals	1a
Opinion of the District Court	15a
Notice of Appeal	37a

CITATIONS

Cases: Page

Bibb v. *Navajo Freight Lines*, 359 U.S. 520 (1959) 12

Brotherhood of Locomotive Firemen & Enginemen v. *Chicago, R.I. & P.R. Co.*, 393 U.S. 129 (1968) .. 10, 16, 18

Hunt v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977) 11

Huron Cement Co. v. *Detroit*, 362 U.S. 440 (1960) .. 12

Morris v. *Duby*, 274 U.S. 135 (1927) 12

Railway Express Agency v. *New York*, 336 U.S. 106 (1949) 13

Raymond Motor Trans. Inc. v. *Rice*, 434 U.S. 429 (1978) 8, 10, 11, 12, 13, 14, 15, 16, 17, 18

South Carolina Highway Dept. v. *Barnwell Bros. Inc.*, 303 U.S. 177 (1938) 12, 17, 18

Sproles v. *Binford*, 286 U.S. 374 (1932) 12, 17

Watson v. *Employers Liability Assur. Corp.*, 348 U.S. 66 (1954) 2

Constitutional Provision:

United States Constitution

Article I, Section 8 ..... 1, 2

State Statute:

1979 Code of Iowa § 321.457 .....1, 2, 7, 12, 13, 14

Other Authorities:

Advisory Committee's Note, Rule 201, Federal Rules of Evidence (West. 1979) 12-13

K. Davis, *Administrative Law Treatise*, § 12:03 (2d ed. 1979) 12

Tushnet, *Reexamining the Dormant Commerce Clause*, 1979 Wis.L.Rev. 125 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

RAYMOND KASSEL, et al.,
Appellants,

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE,
A Delaware Corporation,
Appellee.

On Appeal from the United States Court of Appeals for the Eighth Circuit

---

JURISDICTIONAL STATEMENT

Raymond Kassel, et al., appeal from the final judgment of the United States Court of Appeals for the Eighth Circuit, dated December 7, 1979, holding that Section 321.457(6), Iowa Code, creates an undue burden on interstate commerce in violation of Art. I, § 8 of the Constitution of the United States.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit, which appears in the appendix hereto, p. 1a, *infra*, is not yet reported.

The opinion of the United States District Court for the Southern District of Iowa, which appears in the appendix hereto, p. 15a, *infra*, is reported at 475 F. Supp. 544 (S.D. Iowa 1979).

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit, holding that Section 321.457(6), Iowa Code, creates an undue burden on interstate commerce in violation of Article I, Section 8, of the Constitution of the United States, was filed on December 7, 1979.

Notice of Appeal was filed January 4, 1980, and a supplementary Notice of Appeal was filed February 5, 1980. *See* p. 37a, *infra*.

This appeal is being docketed within 90 days from the entry of judgment below. The jurisdiction of this Court to review the decision by appeal is conferred by 28 U.S.C. § 1254(2) and is sustained by *Watson* v. *Employers Liability Assur. Corp.*, 348 U.S. 66 (1954), *rehearing denied*, 348 U.S. 921 (1955).

CONSTITUTIONAL PROVISION AND STATUTE

Article I, Section 8, United States Constitution:

The Congress shall have power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian tribes. . . . Section 321.457, Iowa Code (1979):

> 321.457 *Maximum length.* The maximum length of any motor vehicle or combination of vehicles, except fire fighting apparatus and vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot be dismembered readily when required for emergency

repair of public service facilities or properties, and such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to mark clearly the dimensions of such load, at which time, a member of the state highway patrol shall be notified prior to the operation of such vehicle, shall be as follows:

1. No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

2. No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

3. Except as to combinations of vehicles, provisions for which are otherwise made in this chapter, no combination of truck tractor and a semitrailer hauling livestock shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet, nor shall any other combination of vehicles coupled together, unladen or with load, have an overall length, inclusive of front and rear bumpers in excess of fifty-five feet. Combinations of vehicles consisting of a motor vehicle upon which a van box is fastened and which draws and bears a portion of the weight of a semitrailer purchased by an Iowa resident prior to April 16, 1974, may be operated on the highways of this state with a length exceeding fifty-five feet but not exceeding sixty feet, if a special overlength permit is obtained from the department for such operation. This special overlength permit shall be issued for the vehicle and such permit shall be valid until such time as the vehicle is no longer operable or until the owner of the vehicle

transfers title to the vehicle to a nonresident. All such vehicles purchased after April 16, 1974, shall not be allowed to operate on the highways of this state.

4. However, a mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided, however, that the mobile home and its towing unit shall not be in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck or 'pickup' shall not be construed to be a motor truck. Further providing that a portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that such vehicle or combination of vehicles drawing such loading chute is not in excess of the legal length provided for such vehicles or combinations.

5. No combination of vehicles coupled together which are used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, travel trailers, boats, farm and industrial tractors and self-propelled farm implements, nonself-propelled implements of husbandry, and self-propelled vehicles shall have an unladen length, inclusive of front and rear bumpers in excess of sixty feet, but the passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, or boats being transported may extend up to three feet beyond the front and rear bumpers of the transporting vehicles when the overall length of the vehicle with load does not exceed sixty-five feet.

6. No combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers in excess of sixty feet.

7. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irre-

spective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state on July 1, 1974. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 code of federal regulations, paragraphs 1048.10, 1048.38, and 1048.101 as they exist on July 1, 1974.

QUESTIONS PRESENTED

1. Whether, when a state statute limiting the length of vehicles which may operate on its highways is challenged under the dormant commerce clause, a district court's review of conflicting evidence of legislative facts should be limited to the question of whether evidence has been presented sufficient to support a finding that a rational legislature could conclude that the length of vehicles is related to highway safety.

2. Whether, when conflicting evidence is presented on legislative fact questions concerning the nature and extent of the relationship between the length of vehicles and highway safety, the presumption of constitutionality requires a federal district court to defer to the legislative judgment and to treat the challenged regulation as a safety statute for purposes of weighing state interests against alleged burdens on interstate commerce.

3. Whether, when a district court makes findings of fact adverse to the asserted justifications for a state

statute challenged under the dormant commerce clause, the deference due state legislative judgments requires de novo review by appellate courts of those factual findings rather than application of the clearly erroneous standard of Rule 52, F.R.C.P.

4. Whether on this record it may be concluded that the Iowa regulation is irrational in permitting double-bottom trucks only five feet of additional length beyond that permitted conventional semi-trailers.

5. Whether, in the absence of Congressional action, recent increases in vehicle lengths permitted by some neighboring states and voluntary business decisions by some trucking firms may effectively preempt Iowa's long-standing judgment concerning the length of vehicles which may operate within its borders.

6. Whether the size of vehicles permitted to operate on a state's highways is a subject requiring uniform national standards such that the dormant commerce clause absolutely precludes all state regulation of vehicle size.

STATEMENT OF THE CASE

This is an appeal from a decision by the United States Court of Appeals for the Eighth Circuit affirming an order by the district court that required the State of Iowa to allow 65-foot, double-bottom trucks on its interstate highways.

The plaintiff below, Consolidated Freightways Corporation (hereinafter "CF"), is a regular route common carrier of general commodities operating in forty-eight states under a Certificate of Public Necessity issued by the Interstate Commerce Commission. Defendants below are individual officers of the State of Iowa (hereinafter

"Iowa"), responsible in varying degrees for the enforcement of Iowa's motor vehicle laws.[1]

The statutes challenged by CF represent the Iowa legislature's longstanding judgment concerning the permissible length of trucks of various configurations. Iowa restricts most truck-tractor, semi-trailer combinations to 55 feet. Combinations of three or more vehicles (double-bottoms) and semi-trailers hauling livestock, mobile homes, or transporting other highway or farm vehicles and implements, are permitted a maximum length of sixty feet. Section 321.457, Code of Iowa (1979). Equipment carried on vehicle or implement carriers is permitted to extend three feet beyond the front or rear bumpers, provided the overall length of the load does not exceed 65 feet, § 321.457(5). None of the defendants currently possesses discretionary authority to permit exceptions to these limitations for divisible loads.

The proceedings below developed an extensive record consisting of some 52 evidentiary depositions, 14 days (2,000 pages) of trial testimony, and several hundred exhibits. At trial, Iowa justified the length limitations in question by reference to the state's interests in maximizing highway safety and minimizing the cost of highway maintenance. The record reflects that all states regulate the length of vehicles which may operate on their highways as a means of promoting safety. Iowa introduced evidence tending to show that longer vehicles require more time to pass, thereby increasing the risk of accident (particularly in inclement weather), that additional length contributes to intersection congestion, and that longer vehicles pose greater hazards at the scene of an accident. State officials also expressed concern that

---

[1] Motor Club of Iowa, a not-for-profit group organized to advance the interests of the motoring public, was permitted to intervene below as a party defendant, but has not appealed from the order of the district court.

possible increased traffic from permitting longer vehicles would cause further deterioration of Iowa's already tired roads, thereby increasing safety hazards attributable to traffic congestion, road deterioration and obstructions incident to highway restoration projects.

In rebuttal of CF's claim that 65-foot double-bottoms (hereinafter "doubles"), because of their configuration, are safer than the vehicles permitted on Iowa roads, Iowa introduced evidence tending to show that doubles have no demonstrable safety advantages over conventional semi-trailers (hereinafter "semis"). For example, Iowa introduced evidence from CF's own records that doubles jacknife and upset more than semis in snow and ice, being generally less stable, that CF's overall accident rate for doubles in 1975, 1976, and 1977 (but not 1978) exceeded that of semis, and that some of CF's own drivers expressed a preference for semis over doubles in bad weather. In addition, the statistical expert for Iowa refuted the validity of various statistical studies offered by CF (including the Bureau of Motor Carrier Safety Study relied upon so heavily by the carriers in *Raymond Motor Trans. Inc.* v. *Rice*) because of inadequate sample size or failure to control for significant variables. Indeed, the inadequacy of available statistical studies is dramatically underscored by the fact the Federal Highway Administration is in the midst of Project No. 1-U, a massive effort to determine the relative safety aspects of increased vehicle size and weights and their effect on other highway users. This study will not be completed until 1982 at the earliest.

The district court found as a fact that given CF's recent voluntary business decision to purchase 65-foot equipment, and given the recent legislative decisions of many midwestern states to permit 65-foot equipment, Iowa's longstanding 60-foot limitation "caused" a burden on interstate commerce, namely, CF's diversion of its

equipment around Iowa and into states in which it could be lawfully operated.

Although it recognized the effort made by Iowa to reinforce the "strong presumption of the validity" of the statutory limitation as a safety measure (App., *infra* p. 20a), the district court found as an adjudicative fact that "there is no valid safety reason for barring twins from Iowa's highways *because of their configuration.*" The district court further stated that "[t]he evidence convincingly, if not overwhelmingly, establishes that the 65-foot twin is as safe as, if not safer than, the 60-foot twin and the 55-foot semi." (App., *infra* at p. 21a). In balancing Iowa's interests in length limitations against the burdens on interstate commerce, the district court stressed the proposition that interstate highways are not a local concern. At the same time, the district court explicitly rejected CF's claim that Iowa's length limitations discriminated against interstate commerce. The court found the regulations neutral on their face and that CF had not proven any discriminatory enforcement. All but one of the statutory exceptions were found to be consistent with the state's concern for safety. (App., *infra* at pp. 29a-30a). Finally, the district court called for action by Congress:

> The trucking industry has long played leapfrog with weight and length limitations to achieve alternate increases. Truckers that haul products that "cube out" before they "weigh out" ask for an increase in length of a few feet so they can take advantage of the weight limit. Then those truckers that haul products that "weigh out" before they "cube out" ask for weight increases so they can utilize the additional length. It is not difficult to establish that the small increase in weight or length creates no additional safety hazard damage to highways. With some officials saying 108 foot triple-bottoms impose no additional safety hazard on interstates, there appears to be no end in sight.

> If this concern points to anything of particular significance, it is that the interstates should be treated differently than other highways. Regulations regarding the length. width and weight of vehicles using the interstate system should be uniform. Congress should pre-empt this area of the law and set these standards.

(App., *infra* at pp. 27a-28a)

The Eighth Circuit Court affirmed, holding that the Dormant Commerce Clause requires Iowa to permit CF to operate doubles 10 feet longer than the limit for semis; a mere five additional feet were held constitutionally insufficient. Reading *Raymond Motor Trans. Inc.* v. *Rice*, 343 U.S. 423 (1978) (hereinafter "*Raymond*"), to require a Federal District Court to determine whether safety justifications are substantive as a matter of adjudicative fact (App., *infra* at p. 7a), the Court of Appeals concluded that the District Court's Findings of Fact were not "clearly erroneous." (App., *infra* at p. 7a). In contrast to the Findings and Conclusions of the District Court, the Court of Appeals held that the cumulative effect of various exemptions from Iowa's length regulations constituted a "factor weakening the presumption in favor of a safety regulation" and reduced "our willingness to assume that the State's own political process serves as a check on burdensome regulations." (App., *infra* at pp. 10a-11a). Judge Henley, writing *Dubitante*, noted that the Court of Appeals' reading of *Raymond* was difficult to reconcile with the rule of *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, R.I. & P.R. Co.*, 393 U.S. 129, 138-39 (1968), that "the District Court's responsibility for making 'findings of fact' certainly does not authorize it to resolve conflicts in the evidence against the legislature's conclusion or even to reject the legislative judgment on the basis that . . . the legislative viewpoint constitutes

nothing more than . . . 'pure speculation.'" (App., *infra* at p. 12a).

THE QUESTIONS ARE SUBSTANTIAL

Whether Iowa must permit 65-foot doubles to operate on its highways is an important question; it is not, standing alone, a question upon which rests the fate of the Republic. If the decision of the courts below is left standing, however, states may no longer regulate the length of trucks on their highways. Given Congressional inaction on the subject, this preclusive interpretation constitutes a major reallocation of authority in our federal system.

Challenges to state safety regulations under the dormant commerce clause frequently present analytic difficulty. Nonetheless, certain general principles of adjudication have emerged from prior decisions of this Court which suggest the following analytical framework. Congress possesses exclusive authority to regulate interstate commerce, qua interstate commerce, and the states may not erect barriers to the free flow of interstate commerce. However, in the absence of congressional regulation, states may adopt nondiscriminatory regulations of local activities within their borders to promote the health, safety and welfare of its citizens, even if such regulations have an incidental impact on interstate commerce. *Raymond*, 434 U.S. at 440. To insure that states do not attempt to impede interstate commerce under the guise of police power regulation, federal courts will not conclusively presume that the stated purpose of state regulation is necessarily its real motive. *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333, 352 (1977). Once it is determined as a threshold matter that the purpose and effect of the state regulation relate to legitimate state interests, it may still be necessary for a federal court to balance competing interests to de-

termine whether "the burden imposed on such commerce is clearly excessive in relation to putative local benefits." *Huron Cement Co.* v. *Detroit*, 362 U.S. 440, 443 (1960). However, where a court is satisfied that a regulation advances a state interest in highway safety, the balancing process begins with a strong presumption of validity for that regulation and legislative judgments about the relative importance of safety benefits in comparison with related burdens on interstate commerce will not be second-guessed by federal courts. *Raymond*, 434 U.S. at 443-44, 449-50; *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520, 524 (1959); *South Carolina Highway Dept.* v. *Barnwell Bros. Inc.*, 303 U.S. 177, 190-91 (1938); *Sproles* v. *Binford*, 286 U.S. 374, 388-89 (1932).

Guided by these accepted principles, the courts below should have addressed three principal questions in resolving the issues tendered to them: 1) Can § 321.457, taken as a whole, fairly be characterized as a highway safety measure? 2) Is there a rational basis for the particular length limitations imposed upon various classes of vehicles? 3) Assuming that it is a rational safety measure, does § 321.457 impose burdens on interstate commerce that clearly outweigh the safety benefits?

If this mode of analysis is employed, the constitutionality of § 321.457 must be upheld. First, the question of whether the statute may fairly be characterized as a safety measure reduces to the question of whether considerations of vehicle length are rationally related to their safety. That is a question of fact, but it is a question of *legislative* fact, *i.e.*, a general proposition of social fact that underlies a legal premise. *See* K. Davis, *Administrative Law Treatise*, § 12:03 (2d ed. 1979). In previous decisions, this Court has been prepared to take judicial notice, as a legislative fact, of the relationship between safety and truck size. *See Morris* v. *Duby*, 274 U.S. 135, (1927). *See generally* Advisory Committee's Note, Rule

201, Federal Rules of Evidence (West. 1979). And, all states regulate the length of vehicles which may operate upon their highways as a means of promoting safety. Although CF did not directly dispute the general relationship between truck length and safety, there is evidence in the record both supporting and discounting the extent of that relationship. What emerges with stark clarity from the record, however, is that experts cannot make precise statistical statements about the relationship. In any event, the district court plainly found that length is generally related to safety. In decrying the leapfrog tactics of the trucking industry and calling for Congressional specification of uniform length standards, the district court recognized a legitimate safety concern with the ever longer vehicles the industry prefers to operate. On this record, the trial court could not, and did not, conclude that length is unrelated to safety as a matter of law. *Cf. Raymond*, 434 U.S. at 450 (concurring opinion).

If length is related to safety, the next question is whether the particular length limitations imposed by § 321.457 are rational. Although this may more properly be a due process than a commerce clause inquiry, the question has been addressed in this case. The problem here is essentially one of legislative line-drawing, not unlike the problem of setting a minimum voting age. Maturity is thought to be related to casting a minimally intelligent ballot, but whether the voting age should be set at 16, 18 or 21 is a question about which reasonable people may differ.

In the absence of a suspect classification or adverse impact upon a fundamental right, federal courts employ a deferential "rational basis" standard of review to questions of legislative line-drawing. *Railway Express Agency* v. *New York*, 336 U.S. 106 (1949). There has been no showing here that Iowa has been constitutionally

unreasonable in drawing the line in the general range of 55 to 60 feet. Nor has there been a showing that Iowa has unconstitutionally disadvantaged doubles vis-a-vis semis. Indeed, apparently because of their configuration, Iowa permits doubles to operate five feet longer than semis. It cannot seriously be argued that it is irrational to decline to provide an additional five-foot differential to doubles because of their configuration.

The final question is whether, given the presumption of constitutionality, the burdens on interstate commerce are plainly excessive in relation to the safety benefits. This question was not properly addressed below because § 321.457 was not treated by the courts as a safety measure.

The courts below, however, did not adopt this traditional mode of analysis because they misinterpreted this court's decision in *Raymond Motor Trans. Inc.* v. *Rice, supra.* Rather, CF tendered and the courts adopted the question of whether 65-foot doubles are less safe than 55-foot semis because of their configuration. Plainly, however, Iowa prohibits 65-foot doubles because of their 65-foot length, not because of their twin-trailer configuration. Moreover, the courts below treated the question as one of adjudicative fact appropriate for traditional "findings of fact" and the application of a "clearly erroneous" mode of appellate review. If that were the appropriate question, it must be conceded that experts cannot provide statistically reliable evidence that 65-foot doubles are less safe than 55-foot semis. The record here makes clear that the state of the art has not advanced to the point where reliable statistical statements can be made when the inquiry is focussed that narrowly. Indeed, Iowa could not provide reliable expert testimony that 55-foot semis are less safe than 65-foot doubles and thus that limitation would also now be suspect. For that matter, because there has been so little experience with

100-foot triples, it is doubtful that experts could make reliable statements clearly showing that 100-foot trucks are less safe than 60-foot trucks. There are many good reasons to believe they are less safe, but scientific proof is another matter. For these reasons, if the decision below remains intact the states are totally removed from the regulation of vehicle length, even if Congress continues to refrain from preempting the field.

The courts below reached this disturbing result because they asked the wrong question; and they asked the wrong question because they misread *Raymond*. Properly interpreted, *Raymond* represents an application of the accepted doctrine that a federal court need not always accept a safety justification for a state regulation on the naked assertion of the state's lawyers. In this regard, *Raymond* stressed 1) the extensive evidentiary showing of the trucking firms concerning the safety of the trucks they wished to operate; 2) the complete lack of evidence offered by Wisconsin in support of the general relationship between length and safety; and 3) the numerous discretionary exceptions to the Wisconsin length limitation, which had been applied in a manner that demonstrated greater concern for protecting domestic commerce than for promoting highway safety. Largely ignored by the courts below were this Court's careful statements limiting *Raymond* to its facts and emphasizing that a state need only make a colorable showing that its regulations contribute to highway safety. *Raymond*, 434 U.S. at 448.

The record in this case distinguished the Iowa length limitations in all of these vital respects. Iowa offered voluminous evidence rebutting the claims of CF and made a substantial showing that length is related to safety.[2] And, although the Court of Appeals attempted,

[2] This evidence cannot be cavalierly rejected by the suggestion that safety concerns are less serious with respect to the operation of longer vehicles on limited access, four-lane highways. While it

sua sponte, to bring this case within the narrow *Raymond* holding by characterizing certain variations in the length limitations as "protectionist," that characterization will not bear analysis, comparison with the district court's findings and conclusions, nor a fair review of the evidence presented.

Because of a misreading of *Raymond*, the courts below not only asked the wrong question but also adopted the wrong analytical framework for addressing the question. In *Raymond*, Wisconsin urged that their regulation should prevail if, without more, it bore a rational relation to highway safety. This Court rejected that claim, properly holding that even were a rational relationship shown, it would still be necessary for a federal court to address a further question, namely whether the burden on commerce clearly outweighs putative safety benefits. The latter question plainly compels a balancing of competing interests.

The courts below mistook this rejection of Wisconsin's ultimate claim as an invitation to federal courts to sit as highway safety examiners and to make de novo determinations, using preponderance of evidence and clearly erroneous standards of review, of whether a highway regulation advances safety. But *Raymond* did not reject the presumption of constitutionality. Nor did it reject the teaching of *Brotherhood* that, in the guise of finding facts, a federal court should not resolve conflicting evi-

---

may be proper to limit the relief granted to that requested, the courts below were evaluating the underlying basis of Iowa's comprehensive length regulation. In Wisconsin, by way of contrast, the Department of Transportation possessed administrative discretion to permit doubles solely on interstate highways. The issue in *Raymond* was thus the reasonableness of the refusal to make one additional administrative exception in a context where exceptions were virtually the rule. In any case, the analysis employed by the courts below clearly jeopardizes the continuing validity of length limitations on all Iowa highways carrying significant interstate commerce.

dence in an area of scientific uncertainty to reject a reasonable policy judgment by a legislative body.

Unlike Wisconsin, Iowa made a sufficient showing that length is related to safety and that it is rational to permit doubles only five feet more length than semis. Thus, the third stage of the analysis, the balancing of local interests against the burden on interstate commerce, should have been approached from quite a different perspective than in *Raymond*. Here, unlike in *Raymond*, the balancing should have commenced with the considerable weight traditionally attached to a reasonables legislative concern for highway safety.

If the balancing question is approached from that perspective, the Iowa regulation must be upheld on this record. First, the court below inappropriately treated the Iowa regulation as the *cause* of the claimed burden. But the record clearly shows that Iowa's length limitations are of long standing and that the diversion around Iowa stems from CF's voluntary decision to purchase longer equipment which may now be lawfully operated in surrounding states as a result of legislative changes. Accepting a causal argument of that type effectively permits the trucking industry and a few other states to preempt a reasonable state policy. Heretofore only Congress has been conceded that authority. *Sproles* v. *Binford*, 286 U.S. 374, 390 (1932) and *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177, 195-96 (1938), expressly reject the notion that one state can preempt another in an area admitting of diversity of regulation. *Raymond* certainly did not purport to change the traditional view that highway regulation is a matter of local concern which does not, in the absence of Congressional action, require a uniform policy of laissez-faire.

Even were it appropriate to attribute the claimed burden to Iowa's length regulation, the nature and the extent of CF's showing does not outweigh the safety and other

state interests supporting the length limitation. CF made no showing that the flow of real goods is actually impeded; the length limitation does not operate as a barrier to the underlying commerce. Moreover, unlike in *Raymond*, Iowa challenged CF's efforts to establish a quantifiable burden on interstate commerce. At best, CF showed that diverting their equipment produced a modest increase in their costs, a one time increase in costs equivalent to less than one-third of one percent of CF's operating costs for a particular year. In contrast, CF experienced a 24 percent, per year increase in fuel costs in the years 1972 through 1977, cost increases not attributable to Iowa's length statute. Moreover, CF admitted that its profitability has increased, as have its Iowa operations. Finally, CF made no showing that any lowered costs attributable to operating 65-foot doubles in Iowa would be translated into lower rates for shippers. In short, the legitimate concerns for a free and efficient national market, which properly underlie the rare invalidation of state regulations by federal courts under the dormant commerce clause, are not present here. *See generally*, Tushnet, *Reexamining the Dormant Commerce Clause*, 1979 Wis.L.Rev. 125.

Raymond did not purport to overrule *Barnwell;* it did not purport to overrule *Brotherhood.* Nor did it suggest that the states are to be absolutely precluded from imposing rational, nondiscriminatory length limitations on vehicles operating on state highways. If the decision below is affirmed, however, it will be plain to all perceptive lawyers that *Raymond* has acquired precisely those effects.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

MARK E. SCHANTZ
Solicitor General
Hoover State Office Building
Des Moines, Iowa 50312

ROBERT W. GOODWIN
Special Assistant Attorney General

LESTER A. PAFF
Assistant Attorney General

Attorneys for Appellants

February , 1980

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 79-1709

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware Corporation,

Appellee,

v.

RAYMOND KASSEL, Individually and in his capacity as Director of Transportation; ROBERT RIGLER, Individually and in his capacity as a member and Chairman of the Transportation Commission; L. STANLEY SCHOELERMAN, Individually and in his capacity as a member of the Transportation Commission; DONALD GARDNER, Individually and in his capacity as a member of the Transportation Commission; JULES BUSKER, Individually and in his capacity as a member of the Transportation Commission; ALLAN THOMS, Individually and in his capacity as a member of the Transportation Commission; BARBARA DUNN, Individually and in her capacity as a member of the Transportation Commission; WILLIAM MCGRATH, Individually and in his capacity as a member of the Transportation Commission; JON MCCOY, Individually and in his capacity as Director of the Motor Vehicle Division; CHARLES W. LARSON, Individually and in his capacity as Commissioner of the Department of Safety; EDWARD DICKINSON, Individually and in his capacity as Chief of the Iowa Highway Patrol; RICHARD C. TURNER, Individually and in his capacity as Attorney General; and ROBERT D. RAY, Individually and in his capacity as Governor,

Appellants,

MOTOR CLUB OF IOWA,

Intervenor-Appellant.

Appeal from the United States District Court
for the Southern District of Iowa

Submitted: October 11, 1979

Filed: December 7, 1979

Before LAY, HEANEY and HENLEY, Circuit Judges.

HEANEY, Circuit Judge.

The sole issue on appeal is whether the trial court [1] erred in holding that an Iowa law barring the use of trucks longer than sixty feet on Iowa's interstate highways unconstitutionally burdened interstate commerce. Since we find that this case cannot be meaningfully distinguished from *Raymond Motor Transportation, Inc.* v. *Rice*, 434 U.S. 429 (1978), we affirm.

Consolidated Freightways Corporation of Delaware is a regular route common carrier of general commodities operating in forty-eight states under a Certificate of Public Convenience and Necessity issued by the Interstate Commerce Commission. Its business consists primarily of consolidating and transferring small shipments from one location to another by truck. To move these goods, Consolidated operates a variety of tractor-trailer combinations of which the sixty-five-foot combination of a tractor and two trailers (sixty-five-foot twins) has become the most common.

Iowa law [2] prohibits the use of sixty-five-foot twins on its highways although it allows sixty-foot twins and

---

[1] United States District Court for the Southern District of Iowa, Central Division.

[2] The specific law in question, Iowa Code § 321.457(6), reads as follows:

> 6. No combination of three (3) vehicles coupled together one of which is a motor vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers in excess of sixty feet.

fifty-five-foot semis (a combination of a tractor and a forty-five-foot trailer).[3] The sixty-foot twins are not an industry standard and are used primarily in states that prohibit the longer trailers.

Two major interstate highways, I-80 and I-35, cross Iowa. I-80 is a principal east-west transcontinental route and is heavily used in the shipment of goods between the two coasts. Sixty-five-foot twins are permitted on the entire length of I-80 except in the states of Pennsylvania, New Jersey and Iowa. I-35 is a principal north-south route linking Minnesota to Texas. Sixty-five-foot twins are lawful on the entire length of I-35 except in Iowa. As a result of Iowa's prohibition on sixty-five-foot twins, Consolidated (1) diverts its sixty-five-foot twins off of the interstate system and on to longer routes around the state, (2) shuttles its twin trailers across the state individually, and (3) uses sixty-foot twins and fifty-five-foot semis in the state.

Consolidated brought this action claiming that the prohibition on the use of sixty-five-foot twins on Iowa's interstate highways is an unconstitutional burden on interstate commerce. It also alleges that statutory and administrative exceptions to Iowa's general limitation discriminate against interstate commerce in favor of local interests. It sought, and the district court granted, injunctive relief preventing the enforcement of Iowa's law as applied to sixty-five-foot twins on Iowa's interstate highways.[4] The court also enjoined enforcement of the

---

[3] Illustrations of the sixty-five-foot twins and the fifty-five-foot semis can be seen at 417 F.Supp. 1352, 1363 (*Raymond Motor Transportation, Inc.* v. *Rice*, (W.D. Wis. 1976)).

[4] In addition to I-80 and I-35, the district court enjoined enforcement on Interstate Highways 280, 380, 29, 680 and 235. I-280 is an alternative routing of I-80 in the Moline-Rock Island-Davenport metropolitan area. I-380 connects Cedar Rapids, Iowa, with I-80. I-29 is a north-south route connecting Kansas City, Missouri, with Canada. I-680 is an alternate routing of I-80 and I-29 in the Council Bluffs area. I-235 is an alternate routing of I-80 and I-35 in the Des Moines, Iowa, area.

Iowa law on roads furnishing reasonable access between the interstates and Consolidated's terminals and facilities for food, fuel, repairs or rest. This appeal followed.

I.

In granting relief, the district court relied on *Raymond Motor Transportation, Inc.* v. *Rice, supra.* In *Raymond*, Consolidated and another common carrier challenged Wisconsin's general prohibition on trucks longer than fifty-five feet. The case was tried to a three-judge district court on affidavits, depositions and exhibits. That court upheld the law as a valid state safety regulation. In reversing, the Supreme Court noted that the trucking interests had "produced uncontradicted evidence showing that their operations are disrupted, their costs are raised, and their service is slowed by the challenged regulations." *Id.* at 438. These disruptions and added expenses included shuttling twin trailers in and out of the state, diverting its long east-west routes around the state, and using fifty-five-foot semis rather than sixty-five-foot twins on Wisconsin routes between Chicago and Minneapolis. *Id.* The Court also noted that the truckers had "presented a great deal of evidence supporting their allegations that 65-foot doubles are as safe as, if not safer than, 55-foot singles when operated on limited-access, four-lane divided highways." 434 U.S. at 436. Wisconsin, "for reasons unexplained, made no effort to contradict this evidence of comparative safety with evidence of its own." *Id.* at 437.

On the basis of this record, the Supreme Court concluded that the strong presumption of validity generally attaching to state highway safety regulations was rebutted. The Court stated:

> On this record, we are persuaded that the challenged regulations violate the Commerce Clause because they place a substantial burden on interstate commerce and they cannot be said to make more

> than the most speculative contribution to highway safety. Our holding is a narrow one, for we do not decide whether laws of other States restricting the operation of trucks over 55 feet long, or of double-trailer trucks, would be upheld if the evidence produced on the safety issue were not so overwhelmingly onesided as in this case.

Id. at 447 (footnote deleted).

The similarities between the instant case and *Raymond* are manifest. The primary difference, however, is that Iowa, unlike Wisconsin, zealously presented arguments concerning two major issues in the case: the interference with interstate commerce and the safety advantages of its regulation. Additionally, it augmented the customary safety argument—that sixty-five-foot twins were in some respects less safe than other truck configurations—by attempting to show that the regulation promoted safety by reducing the amount of traffic crossing the state. Despite these efforts, the district court concluded that (1) the state law interferred with interstate commerce, (2) "[t]he evidence convincingly, if not overwhelming, establishes that the 65 foot twin is as safe as, if not safer than, the 60 foot twin and the 55 foot semi," slip op. at 6, and (3) even given the local benefits derived by diversion of traffic around the state, the "*total effect* of the law as a safety measure * * * is so slight and problematical that it does not outweigh the national interest." Slip op. at 11 (emphasis in original).

II.

Iowa presents two significant contentions on appeal. The first relates to the district court's analysis of the evidence regarding the safety features of the sixty-five-foot twin as compared with other truck configurations. The second concerns the district court's analysis of the argument that, by prohibiting traffic that might otherwise flow

through the state, Iowa's law promotes legitimate local safety interests.

A.

Iowa first argues that the district court erred in substituting its judgment for that of the Iowa State Legislature in determining whether sixty-five-foot twins are safe enough for Iowa's interstate highways. Iowa contends that, instead of making a finding as to the relative safety of the sixty-five-foot twin and the sixty-foot twin or fifty-five-foot semi, the district court should have merely probed the factual dispute with an eye toward determining whether the state's safety justification was "arguable" or "colorable." [5] If any "colorable" or "arguable" safety justification exists, Iowa argues, *Raymond* requires that the regulation be presumed valid when weighed against its alleged burden on interstate commerce.

We cannot accept either Iowa's reading of *Raymond* or its characterization of the district court's treatment of the factual issue before it. First, in *Raymond*, the Supreme Court did not suggest that any state regulation supported by a "colorable" safety claim is to be cloaked with the presumption of validity ordinarily attaching to legitimate safety regulations. The Court held, rather, that when a burdensome regulation cannot, on the record, "be said to make more than the most speculative contribution to highway safety," *Raymond Motor Transportation, Inc.* v. *Rice*, *supra* at 447, it is unconstitutional. It did not authorize courts to substitute their judgments for those of the state legislatures, but directed them only to examine the evidence to see whether reputed safety justifications are substantive, not "illusory." *See id.* at 449 (Blackmun, J., concurring.)

---

[5] Iowa apparently bases its test of arguability or colorability on the following sentence in *Raymond Motor Transportation, Inc.* v. *Rice*, 434 U.S. 429, 448 (1978): "The State of Wisconsin has failed to make even a colorable showing that its regulations contribute to highway safety."

Second, the district court did exactly what *Raymond* charged it to do; it examined the record to determine whether the reputed safety justification was substantive. It did not, as Iowa contends, usurp the function of the state legislature in balancing policies. Rather, it simply determined, on the record before it, that the asserted connection between the prohibition of the sixty-five-foot vehicle and a reasonable concern with its safety was illusory. It made a specific finding that "[t]he evidence convincingly, if not overwhelmingly, establishes that the 65 foot twin is as safe as, if not safer than, the 60 foot twin and the 55 foot semi." Slip op. at 6. Thus, there is no safety justification (based on the truck itself as distinguished from the traffic flow of which it is a part) for the prohibition of sixty-five-foot twins unless the district court's factual finding was clearly erroneous.

After our own review of the record, we cannot say that the district court's finding as to the safety of the sixty-five-foot twin was clearly erroneous. Significantly, even Iowa does not appear to contend that the district court's *overall assessment* of the safety of sixty-five-foot twins was erroneous. Rather, using the legal standard that we have here rejected, it contends that a "colorable" argument was made regarding the safety aspects of its regulation through evidence that various characteristics of the sixty-five-foot twin are less advantageous than the corresponding characteristics of the fifty-five-foot semi or the sixty-foot twin. The district court, however, specifically addressed the issue of differing characteristics as follows:

> Twins and semis have different characteristics. Twins are more maneuverable, are less sensitive to wind, and create less splash and spray. However, they are more likely than semis to jackknife or upset. They can be backed only for a short distance. The negative characteristics are not such that they render the twin less safe than semis overall. Semis

> are more stable but are more likely to "rear end" another vehicle.
>
> The added length of the twin is not a substantial factor on four lane divided highways. The state by legalizing the 65 foot automobile carrier has weakened its claim that the extra length creates a safety hazard. It has practically destroyed its argument that double trailers are an additional safety hazard by legalizing the 60 foot twin. The uncontradicted evidence established that the extra five feet in length makes the 65 foot twin more stable than the 60 foot twin.

Slip op. at 6.

The evidence concerning differing characteristics supports, rather than negates, the district court's finding that overall sixty-five-foot twins are as safe or safer than the trucks Iowa currently permits. That finding, based as it is on a record replete with substantiating evidence,[6] is not clearly erroneous. Not one expert, nor any reliable study, took direct issue with it.

B.

Iowa's second major contention is that the district court failed to give proper weight to the second prong of its safety argument. This argument, in essence, is that be-

---

[6] The record includes the testimony of a host of experts, state and federal highway officials, insurance analysists and a variety of statistical studies. It also includes a report prepared by the Iowa Department of Transportation in April of 1975 entitled "Sixty-Five Foot Twin-Trailers on Iowa Highways: Perspective." A particularly significant conclusion of this report is that "65 foot twin trailer combinations have not been shown to be less safe than 60 foot twin trailer combinations or conventional tractor-semitrailers." Plaintiff's Exhibit 2 at 26. It also noted that sixty-five-foot twins have a better turning radius and a shorter stopping distance than do semis. In other characteristics, the report noted no difference between the two vehicles. *Id.*

cause the prohibition of sixty-five-foot twins reduces the traffic that might otherwise flow through Iowa, it reduces roadwear and the risk of accident to Iowa's citizens and is, therefore, a valid safety regulation. This argument recognizes the burden that Iowa law currently imposes on interstate commerce by diverting sixty-five-foot twin traffic off the interstate system, primarily on to a longer two-lane state highway in Missouri. If Iowa's law were changed, this traffic would follow the most geographically efficient route, which is I-80, through Iowa.[7]

In analyzing this safety justification for the Iowa law, the district court recognized both Iowa's safety interests and the significance of a countervailing safety interest in other states. Though Iowa's safety interest is obvious, the court noted, "it is equally clear that Iowa's length restriction causes the trucks affected by the ban to travel more miles over more dangerous roads in other states which means a greater overall exposure to accidents and fatalities." Slip op. at 8-9. "There is," the court continued, "a parochialism about [Iowa's] local approach to public health and safety, that gives it less weight in the balance between legitimate local concerns for the health and economic welfare of its citizens and the burden on interstate commerce. It has the aura of protectionism usually associated with discrimination against interstate commerce." *Id.* at 10. As a result, the court made the "delicate adjustment of the conflicting state and federal claims," *Raymond Motor Transportation, Inc.* v. *Rice*, *supra* at 440 (quoting *Great A&P Tea Co.* v. *Cottrell*, 424 U.S. 366, 371 (1976)), in favor of the national interest in unburdened interstate commerce.

With this adjustment we can only agree. When a state regulation directly pursues a valid safety objective, some

---

[7] The 1975 report by the Iowa Department of Transportation cited in note 6 predicted that at that time, repeal would have increased Iowa highway usage by approximately 75,000 truck trips each year. *Id.* Current estimates are higher.

burdening of interstate commerce will be tolerated. How much is a matter of balance. *See Raymond Motor Transportation, Inc.* v. *Rice, supra* at 441. When, however, the regulation's objective accrues not directly, by prohibiting a vehicle with which there is some inherent safety problem, but indirectly, by the deflection of interstate commerce away from the state, the balancing is automatic, national interests must prevail. We caution that our holding in no way endorses a "lowest common denominator approach" to state safety regulation; it does not compel states to sacrifice legitimate safety regulations in the face of lower standards in neighboring states. We hold only that when a state advances a regulation that both burdens interstate commerce and fails to directly protect a state safety interest, that regulation must succumb to the dominate national interest.

III.

One final reason for our affirmance concerns the cumulative effect of various exemptions from Iowa's general highway length and weight regulations. The district court considered Iowa's exceptions and concluded that they did not form an independent ground for invalidating the regulation. We note, however, that regardless of whether the challenged exceptions would themselves make out a case of unconstitutional discrimination, they may constitute a factor weakening the presumption in favor of a safety regulation. *Raymond Motor Transportation, Inc.* v. *Rice, supra* at 446. This would be so if it appears that the exceptions are "the product of compromise between forces within the State that seek to retain the State's general truck-length limit, and industries within the State that complain that the general limit is unduly burdensome." *Id.* at 447.

Iowa's exception to its general limitations include the following:

(1) Iowa Code § 321.457(7) gives Iowa's border cities the power to adopt by ordinance the length and width limitations of the abutting state. This exception, of course, works to mitigate the local hardships imposed by the general prohibition.

(2) Iowa Code § 321.457(5) allows for the transportation of passenger vehicles, light trucks, boats and farm tractors and implements in vehicles of sixty feet with an overhang not to exceed sixty-five feet. This exception not only eases the burden on the general limitation on Iowa consumers and its agricultural community, but it undercuts Iowa's argument that sixty-five-foot twins are unsafe due to their length.

(3) Iowa Code § 321.457(3) allows for the transportation of livestock in sixty-foot semis. Other semis are limited to fifty-five feet. This exception is of undoubted assistance to Iowa's agricultural interests.

(4) The record also discloses that the Governor of Iowa has the power to proclaim a state of emergency "to protect the public peace, health and safety, and to preserve the lives and property of the people of the state." Slip op. at 14. The Governor and his agents used this power to authorize the issuance of 1,636 permits in 1977 and 2,984 permits in 1978 providing temporary exemptions from general weight limitations.

Together, these exceptions appear to work a rough "compromise between forces within the State that seek to retain the State's general truck-length limit, and industries within the State that complain that the general limit is unduly burdensome." *Id.* at 447. Certainly, they reduce our willingness to assume that the state's own political process serves as a check on burdensome regulations. Consequently, we consider these exemptions as another factor reducing the weight of Iowa's safety claim in the balance with national interests.

For these reasons, we affirm.

HENLEY, Circuit Judge, *dubitante.*

Applying a test used by Mr. Justice Powell in *Raymond Motor Transportation, Inc.* v. *Rice*, 434 U.S. 429 (1978), our court affirms a finding of violation of the commerce clause. Given the manifest similarities between the instant case and *Raymond*, it may well be that affirmance is in order. Even so, it is at least questionable whether the Supreme Court requires a balancing of the burden on interstate commerce against putative local benefits. *Id.* at 441-42. This uncertainty stems from the fact that the Supreme Court may have enunciated three or more distinct tests for determining whether a state statute unconstitutionally burdens interstate commerce.

In *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, R.I. & P. R. Co.*, 393 U.S. 129 (1968), the Court set out what may be called a "deferential" test to determine the legitimacy of a state statute burdening interstate commerce. In *Brotherhood*, a group of interstate railroads operating in Arkansas sought declaratory and injunctive relief claiming in part that Arkansas laws requiring a minimum train crew for certain conditions of railroad operation violated the commerce clause. The Supreme Court, in a seven-one decision, held that the district court erred in striking down the "full crew" laws as violative of the commerce clause because it had "indulged in a legislative judgment wholly beyond its limited authority to review state legislation under the commerce clause." *Id.* at 136. The Court noted that the question of safety is clearly one for legislative determination and "[t]he District Court's responsibility for making 'findings of fact' certainly does not authorize it to resolve conflicts in the evidence against the legislature's conclusion or even to reject the legislative judgment on the basis that . . . the legislative viewpoint constitutes nothing more than . . . 'pure speculation.'" *Id.* at 138-39.

In *Raymond Motor Transportation, Inc.* v. *Rice, supra,* the Court again faced the question of whether a state statute or regulation inhibiting the conveyance of goods in interstate commerce was unconstitutional under commerce clause analysis. The case involved a Wisconsin statute which disallowed trucks longer than fifty-five feet or pulling more than one vehicle to operate on Wisconsin highways without a permit. Regulations implementing the statute set forth the various conditions under which permits would be granted. The Court held that the challenged regulations violate the commerce clause because they substantially burdened interstate commerce and the state had failed to make even a colorable showing that the regulations contributed to highway safety.

The Court, however, may have divided somewhat on the proper test for commerce clause analysis. In the opinion for the Court Mr. Justice Powell, relying on *Pike* v. *Bruce Church, Inc.,* 397 U.S. 137 (1970), appeared to approve balancing the burden on interstate commerce against the putative local benefits. Because the Wisconsin regulations were "clearly excessive in relation to the putative local benefits," *Raymond Motor Transportation, Inc.* v. *Rice, supra,* 434 U.S. at 442 (*citing Pike* v. *Bruce Church, Inc., supra,* 397 U.S. at 143), Mr. Justice Powell concluded that the regulations were an unconstitutional burden on interstate commerce.

Mr. Justice Blackmun, however, in a concurrence joined by three other justices,[1] used a different approach. Mr. Justice Blackmun noted that "if the safety justifications are not illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce." *Id.* at 449.

---

[1] The Chief Justice, Mr. Justice Brennan, and Mr. Justice Rehnquist joined in Mr. Justice Blackmun's concurring opinion. Mr. Justice Stevens did not participate in the decision.

Neither opinion emanating from the *Raymond* Court mentioned the views previously set forth by Mr. Justice Black in *Brotherhood.*[2]

As a member of a district court twice reversed in the *Brotherhood* litigation,[3] I am, of course, reluctant to reject the *Brotherhood* decision without specific direction or to join in interring it in an unmarked grave.

---

[2] In *Pike* v. *Bruce Church, Inc., supra,* the Supreme Court also failed to mention *Brotherhood.* The Fifth Circuit, citing a leading commentator, G. Gunther, Cases and Material on Constitutional Law 311 (1975), suggests that the *Brotherhood* approach may have at least in part been implicitly rejected because of its inconsistency with recent commerce clause decisions. *Great Western United Corp.* v. *Kidwell,* 577 F.2d 1256, 1282 n.54 (5th Cir. 1978), *rev'd sub nom. Leroy* v. *Great Western United Corp.,* 99 S.Ct. 2710 (1979).

[3] The *Brotherhood* case, originally styled *Chicago, R.I. & P. R. Co.* v. *Hardin,* 239 F.Supp. 1 (W.D. Ark. 1965), was brought before a three-judge court in the United States District Court for the Western District of Arkansas. That court decided the case without reaching the constitutional questions posed by the complaint. Defendants and intervenors, however, appealed to the United States Supreme Court which reversed and remanded for consideration of the constitutional questions. *Brotherhood of Locomotive Eng'rs* v. *Chicago, R. I. & P. R. Co.,* 382 U.S. 423 (1966). On remand, the three-judge district court held that evidence presented to the court required the conclusion that continued enforcement of the Arkansas statutes violated due process and unconstitutionally burdened interstate commerce. *Chicago, R.I. & P. R. Co.* v. *Hardin,* 274 F.Supp. 294 (W.D. Ark. 1967). The Supreme Court, however, again reversed, *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, R.I. & P. R. Co., supra.*

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 78-179-1

[Filed Aug. 16, 1979]

CONSOLIDATED FREIGHTWAYS
CORPORATION OF DELAWARE,
Plaintiff,

vs.

RAYMOND KASSEL, *et al.*,
Defendants,

and

MOTOR CLUB OF IOWA,
Defendant-Intervenor.

MEMORANDUM OPINION AND ORDER

This is an action for declaratory and injunctive relief brought by Consolidated Freightways Corporation of Delaware (CF). It seeks to have Section 321.457(6) of the Iowa Code, which limits a combination of three vehicles coupled together to 60 feet, declared to be an unconstitutional burden on interstate commerce. It also alleges that certain exceptions to that limitation found in the statutes, departmental regulations, and permit and enforcement practices unconstitutionally discriminate against interstate commerce. The defendants are various responsible state officials. The Motor Club of Iowa, an affiliate of the American Automobile Association, was given permission to intervene on behalf of the defendants.

The relief requested is directed toward and limited to "Interstate Highways 80, 35, 280, 380, 29, 680, or 235,

access routes to and from plaintiffs terminals, and reasonable access from said Interstate Highways to facilities for food, fuel, repairs or rest". The limitation of the issues to the Iowa Interstate System and reasonable access thereto has an important bearing on the Court's decision.

The trial lasted 14 days. The oral testimony was supplemented by a large number of depositions and hundreds of exhibits. It would unduly extend this opinion to review the evidence. The Court will state the findings of fact in narrative form as ultimate facts.

General Background

CF is one of the country's largest general commodity carriers. General commodity carriers usually transport small individual shipments between two points on its route structure. They deliver freight to destinations beyond their authority be interlining or interchanging with other general commodity carriers. They are obligated to provide timely, complete service under published rates to the public without discrimination. The basic pattern for the movement of LTL (less than a load) shipments is as follows: (1) pick up from the shipper; (2) consolidate with other shipments moving in the same direction at the originating terminal; (3) dispatch of the consolidated trailer load to a "break bulk" or reconsolidation terminal; (4) unload at the break bulk terminal and reconsolidate shipments from different points of origin moving to the same destination terminal; (5) dispatch the reconsolidated trailer load over-the-road to the destination area terminal; (6) unload the over-the-road trailer and reconsolidate shipments for logical local delivery service; and (7) deliver to the consignee. "Cross-dock" or break bulk handling creates delays, adds costs and exposes the freight to loss or damage. For efficient and economical operation it should be kept to a minimum.

CF operates in 46 states and has a complex system of routes, terminals and mainline driver relay stations. Computers are utilized to improve its efficiency and service. It has an intensive safety program including driver's qualification tests, safety meetings, periodic equipment inspections, driver's reports, patrolling safety supervisors, and accident investigations.

CF's standard combination of units for transcontinental movement of freight is a sixty-five foot twin which consists of a tractor, two 27 or 28 foot trailers and a dolly to connect the trailers. It also uses fifty-five foot semi-trailers, particularly in the areas of the county where twin trailers are prohibited. For Iowa use, it couples a 22 foot trailer with a 27 or 28 foot trailer. Although twins can carry more freight, CF is able to reduce the cross-dock handling by using two smaller trailers rather than one large one. Hereinafter reference to "twins" or "double bottoms" will mean a 65 foot combination of units. When the reference is to a double bottom of a different length, the length will be stated. "Semi" will be used to refer to a 55 foot combination of a tractor and one trailer.[1]

We are concerned here with CF's route that originates in the industrial east and distributes the products manufactured there at various locations west of Iowa and CF's route that originates in the Twin City area in Minnesota and distributes the freight south or west of Iowa. Of course, we are also concerned with the return trips.

Interstate 80 (I-80) which crosses Iowa, is a principal east/west transcontinental route. Twins are lawful its entire length except for Iowa, Pennsylvania and New Jersey. Interstate 35 (I-35) is a principal north/south

---

[1] Diagrams showing the configuration of the typical semi and twin are found in the appendix to Raymond Motor Transport, Inc. v. Rice, 417 F. Supp. 1352, 1363 (D. Wis. 1976).

route. Twins are lawful in all states it passes through except Iowa. CF generally uses twins on these routes, consequently, it must divert its trucks off of these interstates around Iowa. This diversion, caused by Iowa's restriction, generated this lawsuit.

Impact on Interstate Commerce

The diversion of twins around Iowa results in longer trips for those carriers that use twins. CF also diverts many of its semis around Iowa. This operational decision was made so that its driver relay system could function more efficiently. These added miles add to the cost of operation,[2] cause greater fuel consumption, increase the number of miles of highway that are subjected to wear and result in more accidents, injuries and fatalities. In the Court's opinion these undisputed facts create a substantial impact on interstate commerce. Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 445 (1978).

The question is whether this impact, under the facts and circumstances shown by the evidence in the case, creates an unconstitutional burden on interstate commerce.

---

[2] The Iowa DOT estimated the increased cost of Iowa's limitation statute to be at least $12,644,000 annually based on 1974 carrier operating costs. CF offered evidence that the ban caused its vehicles to travel over 3,000,000 additional miles annually at an added cost of $2,000,000.

Professor Pogue, an economist, testified for defendants. He determined that CF's costs associated with the Iowa by-pass amounted to only 1/3 of one percent of its total operating costs. He concluded therefrom that the $2,000,000 estimate would have a minimal effect upon freight rates and consequently a minimal effect upon interstate commerce. In the Court's opinion, the extent of the burden on interstate commerce should not be determined by this type of calculation. The percentage figure is small because CF's operation is nationwide. The percentage would be much larger if the computation was based on the operation of a small regional carrier. The Court believes the factors mentioned in the opinion are proper considerations in determining the impact of interstate commerce. This is a case where cost is relevant to the issue of burden on commerce. *Raymond*, 434 U.S. at 445 fn. 21.

Burden on Interstate Commerce

The Commerce Clause of the United States Constitution prevents states from erecting barriers to the free flow of interstate commerce. However, state legislation designed to serve legitimate state interests that is applied without discriminating against interstate commerce, does not violate the Commerce Clause even though it affects interstate commerce. When legitimate local concerns overlap national interests represented by the Commerce Clause, and Congress has not acted, the Court must consider the weight and nature of the state regulatory concern in the light of the extent of the burden imposed on interstate commerce. Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 440-441 (and citations) (1978); Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970); Bibb v. Navajo Freight Lines, 359 U.S. 520, 528-29 (1959).

When the legitimate local concern is highway safety, the Courts have given great deference to state regulations. Southern Pacific Co. v. Arizona, 325 U.S. 761, 783 (1945); Maurer v. Hamilton, 309 U.S. 598, 604 (1940); South Carolina Highway Dept. v. Barnwell Bros., 303 U.S. 177, 190-92 (1938); Sproles v. Binford, 286 U.S. 374, 390 (1932); Morris v. Duby, 274 U.S. 135, 143-44 (1927).

> These safety measures carry a strong presumption of validity when challenged in court. If there are alternate ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature, absent federal entry into the field. Unless we can conclude on the whole record that 'the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences

> which seriously impede it' * * * we must uphold the statute. Bibb v. Navajo Freight Line,s 359 U.S. 520, 524 (1959).

Quoted in *Raymond*, 434 U.S. at 443.

In his concurring opinion in *Raymond*, Justice Blackmun states:

> In other words, if safety justifications are not illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce.

434 U.S. at 449.

In *Raymond*, the Supreme Court held that a Wisconsin ban on 65 foot twins similar to the Iowa statute placed an unconstitutional burden on interstate commerce. As this case reaches the court in a far different posture than *Raymond*, all parties cite it and seek support for their various positions from it. There, the state "virtually defaulted in its defense of the regulations as a safety measure." 434 U.S. at 444. Here, the defendants made an all out effort to reinforce the "strong presumption of the validity" of the statutory limitation as a safety measure by extensive cross-examination and full presentation of evidence. The basis for the Supreme Court's decision was the uncontroverted evidence that 65 foot twins are as safe as, if not safer than, 55 foot semis. The Court stated:

> the challenged regulations violate the Commerce Clause because they place a substantial burden on interstate commerce and they cannot be said to make more than the most speculative contribution to highway safety.

Raymond, 434 U.S. at 447.

After a thorough review of the evidence bearing upon the relative safety of 65 foot twins, 60 foot twins and

55 foot semis, the Court can only conclude, in spite of defendants' efforts, that there is no valid safety reason for barring twins from Iowa's highways because of their configuration.

The evidence convincingly, if not overwhelmingly, establishes that the 65 foot twin is as safe as, if not safer than, the 60 foot twin and the 55 foot semi. Many of the studies relied on to support this position were not designed to answer this specific question and did not eliminate possible biases. Therefore, they were not statistically acceptable. However, they were of some value as evidence. Some of the biases favored semis. Some favored twins. Nevertheless, these studies, including one by Iowa's DOT in 1975, indicated that overall, the twin is as safe as a semi or a 60 foot twin. State highway officials from the surrounding states unanimously agreed that twins were as safe as the trucks now legal in Iowa. CF's experts on highway safety were of the same opinion. None of defendants' experts stated that twins were not as safe as semis overall.[3] Although some drivers preferred the handling characteristics of semis over twins, none felt that twins were unsafe. CF's own statistics and its "matched pair analysis" are strong support for the finding that there is little, if any, difference in the safety of semis, 60 foot twins or 65 foot twins.

Twins and semis have different characteristics. Twins are more maneuverable, are less sensitive to wind, and create less splash and spray. However, they are more likely than semis to jackknife or upset. They can be backed only for a short distance. The negative characteristics are not such that they render the twin less safe than semis overall. Semis are more stable but are more likely to "rear end" another vehicle.

---

[3] See Fn. 3 attached to this opinion as an appendix for a discussion of defendant's expert testimony.

The added length of the twin is not a substantial factor on four lane divided highways. The state by legalizing the 65 foot automobile carrier has weakened its claim that the extra length creates a safety hazard. It has practically destroyed its argument that double trailers are an additional safety hazard by legalizing the 60 foot twin. The uncontradicted evidence established that the extra five feet in length makes the 65 foot twin more stable than the 60 foot twin.

Defendants claim that the evidence is inconclusive on the relative safety issue, and it is a reasonable policy decision for Iowa to make a safety distinction between twins and semis. Defendants argue that they should prevail because of the strong presumption. The Court cannot accept this argument as it believes that the evidence clearly establishes that the twin is as safe as the semi.

If the extent of the burden placed on interstate commerce were to be weighed against the additional safety hazards created by the configuration of the twins alone, the Court would hold, without further discussion, that the legislation excluding twins has so slight or problematical effect in reducing accidents or casualties that its value as a safety measure does not outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it. It may be, under *Raymond*, that the inquiry should end at this point.

However, as one reads *Raymond*, one senses the reluctance of the Supreme Court to decide the case as it felt it must under the inadequate defense raised by the State of Wisconsin. Justice Powell uses terms like "default", "overwhelming one sided evidence", and "uncontroverted evidence". In his concurring opinion, Justice Blackmun characterizes the Court's decision as a "conclusion that safety interests have not been show to exist as a matter of law". 434 U.S. at 450. Previous pertinent cases are cited, quoted and explained without any indication that

the Court intends to make a substantial departure from previous holdings. The Court restates its reluctance to invalidate state highway safety regulations under the Commerce Clause as the propriety of local regulation in this area has been long recognized. 434 U.S. at 443. Justice Powell concludes his opinion by saying:

> Our holding is a narrow one, for we do not decide whether laws of other States restricting the operation of trucks over 55 feet long, or of double-trailer trucks, would be upheld if the evidence produced on the safety issue were not so overwhelmingly one-sided as in this case.

434 U.S. at 447.

Although the Court has concluded that the evidence clearly establishes that the twins are as safe as, if not safer than semis, it believes that the tenor of the opinion is such that the other reasons advanced by the defendants in support of the limitation must be closely examined.

If the length limit for twins was raised from 60 feet to 65 feet, there would be a substantial increase in the number of trucks using Iowa's interstate system. The 1975 report of the Iowa DOT entitled Sixty-five Foot Twin Tailers in Iowa—Perspective, predicted that at that time an additional 206 trucks would use the highways each day for a total of 75,000 additional truck trips annually. Current estimates are about 10 per cent higher. The increased truck traffic would mean an increase in the number of accidents and fatalities in Iowa. The traffic mix between trucks and cars would be less favorable and the trend toward smaller cars would increase the possibility of more serious accidents. Automobile insurance rates would tend to increase and the need for additional highway patrolmen would be intensified. Iowa's citizens would be adversely affected by the increased wear on the interstate highways and the consumption of additional quantities of its limited supply of fuel.

On the positive side, the taxes and fees paid by the twins would more than offset the cost of the additional damage to the highways, if the proceeds were all applied to the interstate system. Iowans would derive substantial economic benefits from the additional traffic.

Both Governor Ray and Robert Rigler, Chairman of the DOT Commission, emphasized the importance of protecting the interests and welfare of Iowa's citizens from the negative consequences of the increased traffic. As the legislature has not changed the law, it is apparent that Iowa's policy makers have decided that the disadvantages of increasing the length limitation outweigh the benefits that would result. These are legitimate local concerns which are entitled to consideration in making the "delicate adjustment of the conflicting state and federal claims". H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 553 (1948).

On the other hand it is equally clear that Iowa's length restriction causes the trucks affected by the ban to travel more miles over more dangerous roads in other states which means a greater overall exposure to accidents and fatalities. More miles of highway are subjected to wear. More fuel is consumed and greater transportation costs are incurred.

We therefore have before us a situation in which matters of legitimate local concern not only overlap with the national interests expressed by the Commerce Clause, but safety and economic interests of other states in particular and the nation as a whole. The resolution of this conflict "necessarily involves a sensitive consideration of the weight and nature of the state regulatory concern in light of the extent of the burden imposed on the course of interstate commerce". *Raymond, supra,* 434 U.S. at 441.

A prime consideration in the "delicate adjustment" process must be the fact that we are dealing with the interstate system. In Iowa, it is composed of four or more lane divided highways with limited access. Roads connected to the interstate are incidently affected. Iowa's interstates are part of a national network of highways designed to provide fast and efficient transportation across the country. Ninety percent of the costs was financed by federal funds. Some funding is now being provided by the federal government for major resurfacing and reconstruction projects. Federal standards must be met. The system is intended to serve the needs of interstate traffic. The cases, which stressed the "peculiarly local concerns" in the use of the state's highways, Morris v. Duby, supra, (1927); Sproles v. Binford, supra, (1932); South Carolina Highway Department v. Barnwell Bros., supra (1938); and Maurer v. Hamilton, supra, (1940), all antedated the establishment of the interstate system. Their holdings were summarized in the following language in Southern Pacific Co. v. Arizona, 325 U.S. 761, 783 (1945):

> [In *Barnwell*] and in Maurer v. Hamilton, supra, we were at pains to point out that there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways. Unlike the railroads local highways are built, owned and maintained by the state or its municipal subdivisions. The state is responsible for their safe and economical administration. Regulations affecting the safety of their use must be applied alike to intrastate and interstate traffic. The fact that they affect alike shippers in interstate and intrastate commerce in great numbers, within as well as without the state, is a safeguard against regulatory abuses. Their regulation is akin to quarantine measures, game laws, and like local regulations of rivers, harbors, piers, and docks, with

> respect to which the state has exceptional scope for the exercise of its regulatory power, and which, Congress not acting, have been sustained even though they materially interfere with interstate commerce (303 U.S. at 187-188 and cases cited).

Raymond continues the great deference to state regulations to promote highway safety within the state, 434 U.S. at 443, but it recognizes the emergence of the interstate system, 434 U.S. at 444, fn. 19.

Because of the important part the federal government plays in the design, construction, maintenance and regulation of interstates, many of the reasons given by the Court for allowing states wide discretion in regulating highways do not apply to interstates. If it had not been shown that twins are as safe as semis, *Raymond* would support a finding that the limitation did not unconstitutionally burden interstate commerce. The strong presumption of its validity as a safety measure, to keep less safe vehicles off of Iowa's highways, would have prevailed. But, if the safety consideration is the reduction of accidents and casualties in Iowa by diverting traffic around Iowa with an overall increase in accidents elsewhere, the fact that interstate highways are involved becomes an important factor in the decision. There is a parochialism about such a local approach to public health and safety, that gives it less weight in the balance between legitimate local concerns for the health and economic welfare of its citizens and the burden on interstate commerce. It has the aura of protectionism usually associated with discrimination against interstate commerce.

There are situations in which regulations intended to limit the amount of traffic on a particular highway would be a legitimate safety measure. Bradley v. Public Utilities Commission, 289 U.S. 92, 96 (1933). But, here, the evidence shows that no such congestion exists on Iowa's interstate roads. The "level of service" offered the public

is quite high. Only in localized urban situations during the rush hour does congestion become a problem. The percentage of trucks on the interstate during these periods is quite small.

In the Court's opinion the balance here must be struck in favor of the federal interests. The *total effect* of the law as a safety measure in reducing accidents and casualties is so slight and problematical that it does not outweigh the national interest in keeping interstate commerce free from interferences that seriously impede it. Legitimate local concerns are outweighed by the burden the limitation places on interstate commerce.

The Court is not particularly comfortable with this result. The long established reluctance of the courts to interfere with State policy on the weight, width and length of vehicles permitted on its highways is being eroded. The public policy of the State of Iowa has been that it is for the best interest of its citizens to limit the length of twins to 60 feet. The public policy of the surrounding states for reasons known to them raised the limit to 65 feet. Apparently they made a policy decision that the advantages of permitting twins outweighed the disadvantages. Here, the Interstate Commerce Clause is being used to force Iowa to abandon its chosen public policy. The trucking industry has long played leap frog with weight and length limitations to achieve alternate increases. Truckers that haul products that "cube out" before they "weigh out" ask for an increase in length of a few feet so they can take advantage of the weight limit. Then those truckers that haul products that "weigh out" before they "cube out" ask for weight increases so they can utilize the additional length. It is not difficult to establish that the small increase in weight or length creates no additional safety hazard or damage to highways. With some officials saying 108 foot triple-bottoms

impose no additional safety hazard on interstates, there appears to be no end in sight.

If this concern points to anything of particular significance, it is that the interstates should be treated differently than other highways. Regulations regarding the length, width and weight of vehicles using the interstate system should be uniform. Congress should pre-empt this area of the law and set these standards. Creeping increases in weight and length limitations would then be subject to national scrutiny and the national will. State by state action would be eliminated. But, even if Congress fails to act, the courts should consider the involvement of interstate highways an important factor in weighing local concerns against the extent of the burden on interstate commerce.

Discrimination against Interstate Commerce.

Section 321.457(6) of the Iowa Code which limits the length of a combination of three vehicles to 60 feet is neutral on its face. However, CF claims that certain statutory exceptions and exemptions, provisions for trip or annual permits and enforcement policies do, in effect, discriminate against interstate commerce. As the Court has concluded that section 321.457(6) places an unconstitutional burden on interstate commerce, it is not necessary to make a detailed analysis of CF's claims in this regard. However, limited comments may be helpful to the reviewing court.

Whether state legislation is designed to protect the health, safety and welfare of its citizens or is intended to forge an economic preference for its own commercial interests, the legislative purpose cannot be accomplished by discriminating against interstate commerce. A state cannot isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade. Philadelphia v. New Jersey, 437 U.S. 617, 626-28

(1978). The crucial inquiry is whether the questioned statute, regulation, or permit procedure is basically a protectionist measure or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental. Philadelphia v. New Jersey, supra, 437 U.S. at 624.

Some questions might well be raised as to the standing of CF to make claims of discrimination because there is little, if any, relationship between the nature of its operation and the nature of the exceptions and exemptions complained of. However, as the Court concludes that there is no unconstitutional discrimination against interstate commerce, standing will be assumed.

Section 321.457(7) Code of Iowa empowers a border city to enact a municipal ordinance authorizing vehicles which meet the width and length limitations of the abutting state to operate within its city limits. CF could take advantage of any ordinance passed under this section. CF did not establish that the state permits twins to operate in border cities that have not passed such ordinance. This exception does not permit these vehicles to operate on highways of the state outside of the border cities. It is consistent with the state policy of protecting its highways and citizens from additional twin traffic across the state.

Section 321.457(3) authorizes the transportation of livestock in 60 foot semi-trailers. No distinction is made between intrastate and interstate commerce. It is a rational legislative decision and does not discriminate against 65 foot twins.

Section 321.457(4) allows the movement of mobile homes up to 48 feet in length if the length of the combination does not exceed 60 feet. As this is an indivisible load, it would be impossible to move a mobile home in Iowa without such exception. "The uses of the highways

for this sort of transportation are temporary only and essential to the public welfare." Sproles v. Binford, 286 U.S. 374, 386 (1932).

Section 321E.28 empowers the Iowa DOT and local authorities to issue single trip permits to move larger mobile homes and factory built structures when the point of origin, or destination, is in Iowa. Severe restrictions are placed on such movement. This section strengthens Iowa's committment to highway safety while it makes a reasonable accommodation for the needs of its citizens and the flow of commerce. Section 321.457(5) permits the use of a combination of vehicles 60 foot long to transport boats, automobiles, light trucks, farm and industrial tractors, implements of husbandry and travel trailers. Boats, cars and light trucks may overhang the front or rear of the vehicle three feet if the load does not exceed 65 feet in length. There is no discrimination against interstate commerce. The exception does weaken the presumption of safety as it relates to the length of combinations of vehicles.

Section 321E.10 authorizes the issuance of annual permits for the movement of truck trailers manufactured or assembled in Iowa in a combination of two or more vehicles that does not exceed 70 feet to other points of manufacture or assembly in Iowa or to a point outside the state. Such movement is subject to severe restrictions which include the requirements that they move over the most direct route on highways at least 24 feet wide with no freight or additional load at speeds not in excess of 45 miles per hour. The restrictions again reveal the legislature's strong concern for highway safety while making a reasonable accommodation to the practical needs of its citizens.

The Iowa Code authorizes the Governor of Iowa to proclaim a state of emergency "to protect the public peace, health and safety, and to preserve the lives and property

of the people of the state". Sections 29C.1 and 29C.3(1). The Governor has exercised this authority to permit longer and heavier vehicles to temporarily use Iowa's highways when shortages of fuel and livestock feed occurred. These proclamations did not unconstitutionally discriminate against interstate commerce.

The Court is of the opinion that none of the pertinent regulations discriminate against interstate commerce. The Court is also of the opinion that CF did not establish unequal or improper enforcement of the law or regulations. Discriminating enforcement constituting a discrimination against interstate commerce was not proven.

Conclusion.

The law provides a strong presumption that Section 321.457(6) of the Iowa Code limiting the length of a combination of three vehicles completed together to 60 feet is a valid public highway safety measure. Plaintiff successfully rebutted that presumption by showing that 65 foot twins are as safe as 60 foot twins and 55 foot semis. There is some benefit to Iowa citizens from the other reasons advanced for the limitation and they are legitimate local concerns. However, the burden imposed on interstate commerce is clearly excessive when related to the putative benefits received in Iowa from the limitation. The limitation imposed by section 321.457(6) cannot stand when applied to the Iowa Interstate Highway System.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Section 321.457(6) Code of Iowa 1977 is unconstitutional as applied to 65 foot twin trailers insofar as it places greater restriction on their operation than on the operation of 60 foot twin trailers or 55 foot semi-trailers on Iowa Interstate Highways 80, 35, 280, 380, 29, 680 and 235 and roads furnishing reasonable access between said interstates and terminals and

facilities for fuel, food, repairs, or rest. The Court would view any distance greater than five miles as unreasonable. A shorter distance might be unreasonable if closer facilities are available.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the defendants and any other official of the State of Iowa under defendants' control, direction or authority are hereby enjoined from enforcing section 321.457(6) Code of Iowa 1977 against the operation of 65 foot twin trailers on Interstate Highways 80, 35, 280, 380, 29, 680 and 235 and roads furnishing reasonable access between said interstates and terminals and facilities for fuel, food, repairs, or rest to any greater degree than the 60 foot twin trailers and 55 foot semitrailers are limited or burdened thereby.

Signed this 16 day of August, 1979.

/s/ W. C. Stuart
W. C. STUART
Chief Judge
Southern District of Iowa

APPENDIX

3. The Court believes its conclusion requires that reference be made to the testimony of defendants' experts.

Dr. Koehler, a statistician, effectively pointed out the deficiencies in the various studies from a statistical standpoint. The studies were not specifically designed to test the comparative safety of twins and semis. They failed to eliminate or control important possible biases. He approved the methodology used by Cf in compiling its "matched pair analysis", which compared the accident, injury and fatality records of twins and semis on an equal number of identical trips over the same route on a month-by-month basis for the year 1978. Each type of vehicle made 188,296 trips. Each type traveled over 56,000,000 miles. In the matched pair analysis, the semis were involved in 100 accidents resulting in 27 injuries and 1 fatality. The twins were involved in 106 accidents resulting in 17 injuries and 1 fatality.

Dr. Koehler was of the opinion that the sample was too small to make these results statistically significant because of the small number of accidents, injuries and fatalities. He felt the matched pair analysis indicated no "extremely gross" differences in accident rates, and provided slight to moderate evidence that the injury rate for twins was lower. He would have liked to have had the accident information for at least 3 years, but could think of no better way to eliminate the biases with the data available.

Dr. Hall, a mechanical engineer, had had no experience with highway construction or highway safety engineering. He obtained information from the comprehensive experiment and study by the American Association of State Highway Transportation Officials (AASHTO) conducted in about 1955 relating to highway wear and design to make calculations con-

cerning the comparative damage to flexible (asphaltic) concrete highways caused by semis and twins. These computations are not acceptable because the figures used in the formula (SN numbers) were not applicable to the design of asphaltic concrete used on the interstates in Iowa. He also used "Bulley data" presented to a congressional committee relating to the "average road in the United States" to reach the conclusion that twins would cause more damage to the average road than semis. Such a computation is meaningless and has no relevance here. The percentages of Iowa interstates surfaced with portland cement and asphaltic concrete are known. A large portion is portland cement. Semis cause more damage to this type of pavement. Twins cause more damage to ordinary asphaltic concrete. There is a conflict in the evidence as to which formula should be used in calculating damage to "deep strength asphalt" also used on portions of Iowa's interstates. The mileage is not a significant factor here.

Dr. Peters is self-employed as a mechanical engineering consultant. He had read considerable scientific material relating to braking and based his analysis of stopping abilities of twins and semis on that literature. He found that CF had good maintenance procedures. In his opinion twins brakes would be more apt to malfunction than semis because there were more parts in the system to fail. He expressed no opinion as to the overall safety of the twins compared to semis or 60 foot twins. He gave testimony concerning splash and spray from trucks passing over a wet surface and passing maneuvers for which no foundation was laid entitling him to express such opinions. He relied upon his driving experience and was in no better position to state such opinion than the average driver.

Mr. Wandling, a consulting engineer, testified that in his opinion a twin has "less yaw stability and

greater amplification of lateral acceleration than a semi", but had no opinion as to how significant it might be under present conditions and the limited information available. Much of the foundation for that opinion was based upon a Michigan study of a double-bottom tanker. The study and a film disclosed that this vehicle had a dangerous propensity to upset under a not unusually severe maneuver to change lanes. The CF van twin is entirely different from the Michigan double-bottom tanker. A film of the identical test performed with the CF van discloses no such dangerous propensity. Mr. Wandling had no opportunity to see this film. The Court accepts Mr. Wandling's opinion that a twin has less yaw stability and greater amplification of lateral acceleration than a semi to some unidentified extent.

There is an indirect relationship between maneuverability and stability. The more maneuverable a vehicle is, the less stable it becomes. In the case of semis, some maneuverability has been sacrified for greater stability. In the case of twins, some stability has been sacrificed for greater maneuverability. These choices do not mean that either vehicle is unsafe or that one is less safe overall than the other.

The Court is of the opinion that Dr. Hall, Dr. Peters and Mr. Wandling were not particularly well qualified to testify about the matters presented to them. Their real expertise lies in other areas.

Dr. Carstens, a civil engineer with a doctorate in transportation engineering, had engaged in studies relating to traffic conflicts which he defined as the possibility that two vehicles might desire to occupy the same road space at the same time requiring one or both to take some evasive action (turning, braking, speeding up, etc.) to avoid a collision. He was asked to look at the potential for increased accidents

if vehicle length were increased from 60 to 65 foot. He made a field survey at one exit from I-35 and I-80 near Des Moines. Observors tabulated the length of time combination vehicles encroached on two lanes at right angles to the direction the trucks were traveling at the intersection. He computed the average rate of acceleration of the trucks for various maneuvers and calculated the additional time that the extra five feet would encroach upon the right-angle lanes. He prepared a chart showing the probability of the occurrence of a "suitable gap" occuring in traffic at various traffic volumes so that the 60 or 65 foot truck could make the maneuver without creating a traffic conflict.

The charts, tables and plats were all interesting but of little practical value. When the table reached the point that there would be no suitable gap for a 60 foot truck to enter a traffic stream of 2000 vehicles per hour until 333,000 vehicles had passed and one suitable gap for a 65 foot truck about every 500,000 vehicles, the calculations lost all significance. The practical fact is that it would take a 65 foot vehicle only a fraction of a second longer to make the maneuver than a 60 foot truck. It did not take these complex tables and calculations to support the witnesses obvious conclusion that "an inescapable result of the increase in vehicle length is an expectation of an increase in accidents because of the type of maneuvers that they have to make in entering and crossing and diverging from traffic stream, and the fact that upon opposing traffic lanes is of necessity a direct function of the length of that vehicle." There was however no attempt to place this increased exposure to accidents in a practical context. The Court does not believe the extra five feet would create a significant additional safety hazard in performing the maneuvers described by the witness.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 79-1709

RAYMOND KASSEL, *et al.*,
Appellants,

v.

CONSOLIDATED FREIGHTWAYS
CORPORATION OF DELAWARE,
a Delaware Corporation
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Raymond Kassel, et al., the Appellants above-named, hereby appeal to the Supreme Court of the United States from the final judgment of this Court declaring Iowa Code § 321.457(6) repugnant to Article I, Section 8 of the Constitution of the United States entered in this action on December 7, 1979.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

THOMAS J. MILLER
Attorney General of Iowa

/s/ Mark E. Schantz
MARK E. SCHANTZ
Solicitor General
Hoover State Office Building
Des Moines, Iowa 50319
(515) 281-5191

ROBERT W. GOODWIN
Special Assistant Attorney General

LESTER A. PAFF
Assistant Attorney General
Attorneys for Appellants

I hereby certify that on this 1st day of February, 1980, copies of this NOTICE OF APPEAL were mailed, postage prepaid to John H. Lederer, Esq., 121 South Pinckney Street, Madison, Wisconsin 53703, and to Terry C. Hancock, Esq., 1100 Des Moines Building, Des Moines, Iowa 50309, Counsel for Appellees.

/s/ Mark E. Schantz
MARK E. SCHANTZ